

AMENDED IN ASSEMBLY APRIL 23, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 86

Introduced by Assembly Member McCarty

January 6, 2015

An act to add Section 11056 to the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 86, as amended, McCarty. Peace officers: Department of Justice: independent investigation.

Existing law establishes the Department of Justice under the direction and control of the Attorney General, and requires the Department of Justice to perform duties in the investigation of crimes as may be assigned by the Attorney General. Existing law requires each department or agency in this state that employs peace officers to establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, as specified.

This bill would require the Attorney General to ~~direct the commencement of an~~ *appoint a special prosecutor to direct an* independent investigation ~~by the Department of Justice~~ if a peace officer, in the performance of his or her duties, uses deadly physical force upon another person and that person dies as a result of the use of that deadly physical force. ~~The bill would require the department, based on its investigation, to prepare and submit a written report setting forth specified information and recommendations to the Attorney General and to the district attorney and law enforcement agency of the county~~

~~in which the use of deadly physical force by a peace officer occurred. The bill would require the Attorney General to post each written report on the department's Internet Web site unless any information in the report is required to be maintained as confidential by any other law. The bill would grant the special prosecutor the sole authority to determine whether criminal charges should be filed. The bill would make the special prosecutor responsible for prosecuting any charges filed.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11056 is added to the Penal Code, to
2 read:
3 11056. (a) ~~(1)~~—If a peace officer, in the performance of his or
4 her duties, uses deadly physical force upon another person and
5 that person dies as a result of the use of that deadly physical force,
6 the Attorney General shall ~~direct the commencement of an~~
7 ~~independent investigation by the Department of Justice~~ *appoint a*
8 *special prosecutor to direct the investigation* concerning the use
9 of deadly physical force by that peace officer.
10 ~~(2) For purposes of this section, the occurrence of the use of~~
11 ~~deadly physical force by a peace officer resulting in death shall be~~
12 ~~referred to as a triggering event.~~
13 (b) Pursuant to this investigation, ~~the department shall determine~~
14 ~~all of the following:~~ *special prosecutor has the sole authority to*
15 *determine whether criminal charges should be filed.*
16 ~~(A) Whether the use of deadly physical force by the peace~~
17 ~~officer constituted a crime.~~
18 ~~(B) Whether use of deadly physical force was in violation of a~~
19 ~~policy adopted by the law enforcement agency that employs the~~
20 ~~peace officer.~~
21 ~~(C) Whether the use of deadly physical force could have been~~
22 ~~avoided.~~
23 ~~(e) Upon the conclusion of an investigation, the department~~
24 ~~shall prepare and submit a written report to the Attorney General~~
25 ~~and to the district attorney and law enforcement agency of the~~
26 ~~county in which the triggering event occurred. The written report~~
27 ~~shall include, at a minimum, all of the following information:~~

1 ~~(1) A statement of facts.~~

2 ~~(2) A detailed analysis and conclusion for each investigatory~~
3 ~~issue described in subdivision (b).~~

4 ~~(3) Recommendations regarding whether there is a basis to~~
5 ~~undertake any of the following actions:~~

6 ~~(A) Prosecute.~~

7 ~~(B) Modify the policies and practices of the law enforcement~~
8 ~~agency that employed the peace officer who was subject to~~
9 ~~investigation under this section.~~

10 ~~(d) The Attorney General shall post and maintain, in a~~
11 ~~conspicuous location, on the Department of Justice's Internet Web~~
12 ~~site each written report prepared pursuant to subdivision (c) unless~~
13 ~~any information in the report is required to be maintained as~~
14 ~~confidential by any other law.~~

15 *(c) If the special prosecutor files charges, the special prosecutor*
16 *shall file those charges in the superior court of the county in which*
17 *the death occurred.*

18 *(d) The special prosecutor is responsible for prosecuting any*
19 *criminal charges that are filed in connection with this section.*

20 *(e) Any support the special prosecutor needs to pursue*
21 *prosecution of the criminal charges filed under this section shall*
22 *be provided by the Office of the Attorney General.*